IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

Bail Appl..No. 7001 of 2007()

CRIME NO.666/06 OF CHALAKUDY POLICE STATION

: PETITIONER

M.JAYACHANDRAN,
AGED 65, S/O.P.MADHAVAN NAIR,
DEEPA SREE, VANCHIYOOR, THIRUVANANTHAPURAM.

BY ADV. SRI.S.GOPAKUMARAN NAIR (SR.)

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/12/2007 ALONGWITH B.A.NOS.7033 & 7290 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.Nos.7001, 7033 & 7290 of 2007

Dated this the 6th day of December, 2007

ORDER

These applications are for anticipatory bail. Petitioners are accused in a crime registered for offences punishable, inter alia, under Section 406 I.P.C at the Chalakkudy Police Station. The allegations relate to the embezzlement of amounts belonging to a Co-operative institution at Chalakkudy. The institution in question is the Chalakkudy Urban Co-operative Bank.

2. The sequence of events commenced with a crime registered at the instance of one C.L.Anto. He, in that complaint before the police, alleged that the then honorary chief executive/secretary of the society has committed acts of embezzlement, misappropriation, breach of trust etc. He as well as some relatives of his were arrayed as accused. The crime was registered on 02.11.2006. All the accused shown in the F.I.R were granted bail. The investigation continued. In the course of investigation, it was realised that the allegations initially raised had only touched the tip of the ice berg and the Co-operative

Bank, its Directors, its officers etc. were involved in gross acts of misappropriation, breach of trust etc. The informant has now been transposed as the 12th accused. By now, 26 accused persons have been arrayed by the investigators.

3. Some of the accused have already been granted regular bail. All these applications are for anticipatory bail. I shall proceed to consider each application separately. Before proceeding to consider each application, generally I shall advert broadly to the nature of the allegations and the principles that will have to be followed while considering these applications for anticipatory bail.

4. At this early stage of investigation, this Court shall not embark on a detailed discussions about the acceptability of the allegations or the credibility of the data collected. The jurisdiction which is sought to be invoked and exercised is the extraordinary equitable jurisdiction under Section 438 Cr.P.C. Compelling reasons must be shown to exist to justify the invocation of such jurisdiction.

5. In the F.I.R filed, the present allegations are not raised. The present allegations have come to light only in the course of investigation. The learned Public Prosecutor has filed statements in each case revealing allegations that are now raised against the respective petitioners. I have granted opportunity to the petitioners to file statements to advance their contentions. I have perused the statements.

6. Some of the co-accused who have also filed applications for anticipatory bail, after discussions at the bar, have chosen not to press the applications and have prayed that such applications may be dismissed without prejudice to their rights to surrender before the learned Magistrate and seek regular bail. All of them were granted permission and their applications for anticipatory bail have been dismissed vide separate orders.

B.A.No.7001 of 2007

1) The petitioner herein is an advocate practising at Trivandrum. He is the managing trustee of a public trust. Security had to be offered for CUSAT and AICTE by the trust, of which the petitioner is the managing trustee. The trust had

availed a loan of Rs.26 lakhs from the Co-operative bank. Security was offered for the said loan. Documents were produced also. Amounts remain to be paid in that account by the trust to the bank. It is alleged that the petitioner is guilty of commission of offences.

2. What are the indiscretions committed by the petitioner? The learned Public Prosecutor has filed statement in this case showing the allegations against the petitioner/accused. As against the petitioner, it is alleged that he had furnished a false address to show that he has a place of residence within the area of operation of the bank. The 12th accused, the original informant and a member of the board of directors, figured as a surety for the trust in this loan transaction. An amount of Rs.34 lakhs remained to be paid by the trust to the bank. The 12th accused is also the chairman of the public trust. It is alleged that the petitioner was also one of the conspirators to siphon out funds of the bank unjustifiably.

3. The learned counsel for the petitioner submits that the address shown is not false by any standards. As an address within the area of operation of the bank had to be shown to avail

the loan, the address of a friend of the petitioner was shown. There is absolutely no culpability involved in the showing of such address. The loan transaction is absolutely justified and completely in accordance with law and the stipulations in the bye-laws. Sufficient security has already been offered. The mere fact that there is some amount liable to be paid cannot by any stretch of imagination make the transaction culpable or the petitioner guilty of any offence. At the moment, there is only a demand for an amount of about Rs.13 lakhs. The petitioner is willing to pay the amount by 15.01.2008. In these circumstances, there is absolutely nothing to show that the petitioner has committed any offence. Undeserved arrest and incarceration of the petitioner is totally unnecessary. The petitioner may be granted anticipatory bail, prays the learned counsel for the petitioner.

4. The learned Public Prosecutor opposes the application. Except that a false address has been given, that the partnership deed has not been produced, that the 12th accused is a surety, that the 12th accused is the chairman of the trust, that the amounts are outstanding and that another overdraft facility has

also been availed by the petitioner, there is no specific allegation raised, which according to me, can prima facie attract culpable liability for the petitioner. I take note of the submissions of the counsel for the petitioner that as a condition for grant of bail, he can be directed to deposit the amount of R.13 lakhs which actually is due from the trust at the moment.

5. In the result, the Bail Application is, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioner shall appear before the learned Magistrate at 11 a.m on 14.12.2007. He shall be enlarged on regular bail on his executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioner shall, on or before 15.01.08, deposit an amount of Rs.13 lakhs in the bank;

iii) He shall appear before the learned Magistrate on 16.01.08 and report to the learned Magistrate that such payment has been made;

iv) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m and 3 p.m on 15.12.2007 and 17.12.2007 and thereafter between 10 a.m and 12 noon on all Mondays and Fridays for a period of three months. Subsequently the petitioner shall make himself available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so;

v) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if those directions were not issued at all;

vi) If the petitioner were arrested prior to his surrender on 14.12.07 as directed in clause (1) above, he shall be released from custody on his executing a bond for Rs1,00,000/- (Rupees One lakh only) without any sureties undertaking to appear before the learned Magistrate on 14.12.07.

B.A.No.7033 of 2007

The petitioner in this case is the 26th accused. He is a guarantor for the 24th accused. 5 title deeds of the petitioner

were deposited in the bank as security for the loan. The title deeds were taken back and the property was sold to another, while the loan transaction remained undischarged. This is the soul of the allegations against the petitioner.

2. It is not disputed now that the 24th accused who has already been granted regular bail by this Court has discharged the entire liability in the loan transaction. The liability in the loan transaction having already been discharged, the indiscretion of taking back the title deeds during the currency of the loan notwithstanding I am satisfied that the petitioner can be granted anticipatory bail. Appropriate proceedings against him shall of course continue. Conditions shall be imposed, which shall ensure that the petitioner co-operates with the investigator.

3. In the result, the Bail Application is, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioner shall appear before the learned Magistrate at 11 a.m on 14.12.2007. He shall be enlarged on regular bail on his executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m and 5 p.m on 15.12.2007 and 17.12.2007 and thereafter between 10 a.m and 12 noon on all Mondays for a period of one month. Subsequently the petitioner shall make himself available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so;

iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if those directions were not issued at all;

iv) If the petitioner were arrested prior to his surrender on 14.12.07 as directed in clause (1) above, he shall be released from custody on his executing a bond for Rs1,00,000/- (Rupees One lakh only) without any sureties undertaking to appear before the learned Magistrate on 14.12.07.

B.A.No.7290 of 2007

Petitioners herein are accused 13 and 14. They are admittedly members of the director board. The crux of the

allegations against them is only that they were also parties to the decision taken by the Board of Directors under which the questionable transaction were entered into by the other accused who by such transactions allegedly siphoned out funds of the bank and its securities without proper authority.

2. What precisely is the culpable conduct of Accused 13 and 14 ? There is no specific allegations personally against any one of them except that they as directors were parties to the decision which enabled the other accused persons to indulge in the alleged crimes. Is there an allegation that they had derived any personal benefits ? There is no such allegation at all. Of course, there is a broad sweeping allegation that they were also conspirators to facilitate the commission of the crimes by taking the relevant appropriate decisions as members of the director board.

3. The learned Public Prosecutor opposes the application. But notwithstanding the opposition, I am satisfied, in the facts and circumstances referred above, that these petitioners can be granted anticipatory bail. Appropriate conditions can of course be imposed to ensure the interests of a fair, efficient and

expeditious investigation.

4. In the result, the Bail Application is, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioners shall appear before the learned Magistrate at 11 a.m on 14.12.2007. They shall be enlarged on regular bail on their executing bonds for Rs.1,00,000/- (Rupees One lakh only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

iii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m and 3 p.m on 15.12.2007 and 17.12.2007 and thereafter between 10 a.m and 12 noon on all Mondays and Fridays for a period of one month. Subsequently the petitioners shall make themselves available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so;

iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if those directions were not issued at all;

iv) If the petitioners were arrested prior to their surrender on 14.12.07 as directed in clause (1) above, they shall be released from custody on their executing bonds for Rs1,00,000/- (Rupees One lakh only) each without any sureties undertaking to appear before the learned Magistrate on 14.12.07.

(R.BASANT, JUDGE)

rtr/-